IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 515 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AJAMAT MASTAKBHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 515 of 2001

MR LAXMANBHAI A AMAR for Petitioner No. 1

MR K.T.DAVE, APP for Respondent No. 1

RULE SERVED for Respondents No. 2-4

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 06/10/2001

ORAL JUDGEMENT

#. In this petition filed under Article-226 of the Constitution of India, the petitioner has challenged the order dated March 7, 2001 (Annexure-'A' to the petition) passed by the externing Authority i.e. Deputy Police Commissioner, Zone-IV, Ahmedabad City by which he has externed the petitioner for a period of two years from five districts i.e. Ahmedabad City, Ahmedabad Rural, Kheda, Gandhinagar and Mehsana and also the order dated June 8, 2001 (Annexure-'B' to the petition) passed by the appellate Authority confirming the said order and prayed to issue a writ, order or direction quashing and setting aside both the above orders.

#. A show-cause notice dated March 10, 2000 (Annexure-C to the petition) under sec.59 of the Bombay Police Act was issued to the petitioner, wherein, several allegations were made against him to the effect that near Mira cinema he is extorting money and the articles from the traders and if the trader refuse to give, quarrel with them and also beating them. By showing knife the traders were given threat and if they oppose in the said activities then picking up quarrel with them and by showing knife give threat to them. Withoug paying rikshaw driver, travel therein and if rickshaw driver oppose or demand fare, give threat to kill them. Harassing innocent people, extorting money from them near Shahalam Tolnaka and the activities carried out by him are detrimental for maintenance of public order. Besides this two offences are also registered against him in the year 1995 and 1998. Therefore, by issuing a show-cause notice the petitioner was called upon to show cause as to why he should not be externed for a period of two years from the districts to which reference is made in earlier paragraph of this judgment.

3. The petitioner replied to the said show-cause notice on April 20, 2000. The externing Authority, after considering the reply and order, passed the impugned order of externment dated March 7, 2001 in exercise of the powers conferred under Section 56(B) of the Act externing the petitioner for a period of two years from the above mentioned districts.

4. Aggrieved by the aforesaid order passed by the externing Authority, the petitioner preferred an appeal before the appellate Authority, which was dismissed by the appellate Authority vide order dated June 8, 2001 (Annexure-B to the petition) which has given rise to the present petition.

5. Mr. L.A.Amar, learned advocate for the

petitioner raised several contentions and tried to convince this Court that the order of externment suffers from various vices much less it is recorded in clear non-application of mind. Besides this, he has also raised a contention that in show-cause notice dated March 10, 2000 the activities alleged against the petitioner were of 1995 and 1998 and the impugned order was passed on March 7, 2001 and therefore, there is a delay of one year in passing the impugned order of externment which is neither explained in the order of externment nor by filing affidavit in reply. Therefore, according to the learned advocate for the petitioner the impugned order of externment suffers from the vices of non-application of mind, and is, therefore, liable to be quashed and set aside.

6. Mr. K.T.Dave, learned APP does not dispute the factual aspects of the matter. He, therefore, urged to pass appropriate order in light of the settled principles enunciated by this Court in this regard.

7. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition and the order passed by the externing Authority as well as the order passed by the appellate Authority and other papers annexed to the petition.

8. It is true that the externing authority has served show cause notice dated March 10, 2000. According to the externing authority the activities carried out by the petitioner are detrimental to the maintenance of public order. Pursuant to the show-cause notice proceedings were initiated, opportunity was given to the petitioner to defend his case and the proceedings were concluded before the externing authority prior to December 2000. Thereafter, externing authority did not pass the order of externment up to March 7, 2001. No explanation is forthcoming either from the order of externment or affidavit in rely as to why there is a delay in passing the order of externment after issuance of show cause notice.

9. A similar question arose before the Division Bench of this Court in the case of SANTOSH RAMPRASAD SHARMA V. DEPUTY COMMISSIONER OF POLICE, CRIMINAL BRANCH, AHMEDABAD & ANOTHER - 1992 (2) GLH 457 wherein this Court has held that in externing a person, which is in the public interest, the authorities are expected to act promptly and if they delay the matter, the same will spell out that there is no urgent need nor necessity to

extern a person from a particular locality or the District. The externment orders curtail the freedom of movement of the person concerned, and, therefore, any laches on the part of the authority concerned cannot be countenanced and the benefit will go to the party concerned and on that score, the externee will be entitled to the benefit of quashing such an order of externment.

10. A similar view is also expressed in the case of CHOTHAMAL SUGANSINGH RAJPUT VS. STATE OF GUJARAT - 30 (1) GLR PAGE 63.

11. Coming to the facts of the present case, at the cost of repetition be it stated that there is delay of more than three months after conclusion of the proceedings and there is a delay of one year after issuance of the show-cause notice in passing the order of externment by the externing authority which has remained unexplained.

12. Seen in the above context, I am of the opinion that the order of externment externing the petitioner from the five districts and that of the appellate authority confirming the order of externment are rendered invalid and illegal and deserves to be quashed and set aside.

13. For the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned orders at Annexures-'A' and 'B' to the petition are quashed and set aside. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(A.M. Kapadia, J.)

Jayanti*